

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. The postal employee partner has health insurance as part of her employee benefits package and has paid for a family plan. However, her federal employer will only allow coverage for the postal employee and her adopted child. In

spite of the civil union, the petitioner is not considered a member of the postal employee's family by the federal government.

3. On July 8, 2002, the petitioner applied for benefits under the VHAP program for herself since she could not be covered by her partner's health insurance. PATH determined that the petitioner was in a three-person family and considered the income of the petitioner's partner in determining the petitioner's eligibility. The petitioner herself has no income as she stays home to care for her young child.

4. On July 11, 2002, the petitioner was notified that she was not eligible for VHAP benefits because her net family income (her partner's \$3,417.89 gross income subjected to a \$90 employment deduction) is considerably over the \$2,324 monthly cap for a family of three. She was advised that she would be eligible for "Vscript" and the "Healthy Vermonters" program both of which help with the cost of prescription drugs.

5. The petitioner appealed this decision asking if she could obtain some special consideration based on her situation. She asks that her civil partner's income not be considered since she cannot access her health insurance.

ORDER

The decision of the Department denying VHAP benefits is upheld.

REASONS

Regulations adopted by PATH address what persons must be included as part of an applicant group:

Financial Need of a VHAP Group

An individual must be a member of a VHAP group with countable income under the applicable income test to meet this requirement.

A VHAP group includes all of the following individuals if living in the same home:

- a. the VHAP applicant and his or her spouse;
- b. children under age 21 of the applicant or spouse;
- c. siblings under age 21, including halfsiblings and stepsiblings, of b.;
- d. parents, including a stepparent and adoptive parents of c., and
- e. children of any children in b. and c., and
- f. unborn children of any of the above.

. . .

VHAP Regulations (W.A.M.) § 4001.8

PATH considers partners who are in a civil union to be included in the definition of "spouse" under its regulation.

Indeed, PATH is required by state statute to take that position:

(a) Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other resource of civil law, as are granted to spouses in a marriage.

(b) A party to a civil union shall be included in any definition or use of the term "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the spousal relationship, as those terms are used throughout the law.

(c) Parties to a civil union shall be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons.

. . . .

(e) The following is a nonexclusive list of legal benefits, protections and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

. . . .

(13) public assistance benefits under state law;

15 V.S.A. § 1204<sup>1</sup>

PATH was thus correct under both its regulation and state law when it included the petitioner's civil union partner with whom she shares a home in her assistance group when

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<sup>1</sup> This statute was passed by the legislature as a result of the Vermont Supreme Court's decision that the exclusion of same sex couples from the benefits and protections incident to marriage under state law violated the common benefits clause of the state constitution. See Baker v. State, 170 Vt. 194 (1999), 744 A.2d 864.

determining her eligibility for VHAP benefits. The regulations further require that the partner's earned income be counted subject to a \$90 standard employment expense deduction. VHAP 4001.81(c) and (e).<sup>2</sup> The net countable income for the petitioner's family was correctly calculated as \$3,327.89 per month. The petitioner's family's net income must be under \$2,324 per month in order for her to be eligible for VHAP. See VHAP 4001.8 and Procedures Manual P-2420B. As her income is more than \$1,000 per month in excess of this amount, PATH was correct to deny her eligibility for the program and the Board must uphold this decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. There is nothing in the law or regulations which would allow either PATH or the Board to make any kind of exception under these circumstances. In fact, to do so would probably be illegal.

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<sup>2</sup> Deductions of up to \$200 per month for a child under two are also allowed for dependent care expenses necessary to enable an individual in the family to retain employment. VHAP 4001.81(f). The petitioner does not appear to have this expense and, even if she did, the deduction would still leave her considerably over income.

The petitioner has a right to feel that she has been treated unfairly with regard to health insurance but her mistreatment has not occurred at the hands of the State of Vermont. The petitioner has been unable to obtain the promise of equal treatment under the state common benefits clause because her partner's employer is the federal government, an entity that apparently does not recognize their civil union. Her grievance is against that federal entity and she is advised to contact an attorney<sup>3</sup> and her federal representatives to discuss what avenues of redress might be open to her.

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<sup>3</sup> The Vermont Lawyer Referral Service should be able to direct the petitioner to an attorney who specializes in this area.